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Electronically
FILED
by Superior Court of California, County of San Mateo
ON 3/12/2024
By /s/ Haley Correa
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

ANTONIO URRUTIA, an individual, on behalf of himself, others similarly situated,

PLAINTIFF,

v.

BLVD RESIDENTIAL INC., a Delaware Corporation, and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO.: 24-CIV-00086

[Assigned For All Purposes to the Hon. Nicole S. Healy, Dept. 28]

FIRST AMENDED CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT

1. Failure to Pay Minimum Wages In Violation of Labor Code §§ 1194 and 1194.2
2. Failure to Pay Overtime Wages In Violation of Labor Code § 510
3. Failure to Provide Lawful Meal Periods And Pay Meal Period Premiums Pursuant to Labor Code §§ 226.7 and 512
4. Failure to Provide Lawful Rest Periods And Pay Rest Period Premiums Pursuant to Labor Code § 226.7
5. Penalties Pursuant to Labor Code § 226(e)
6. Waiting Time Penalties Pursuant to Labor Code § 203
7. Violation of Business & Professions Code § 17200
8. Penalties Pursuant to Labor Code § 2699, *et seq*. for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246-248, 256, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, and IWC Wage Order No. 5-2001 and/or other applicable wage order.

Plaintiff ANTONIO URRUTIA, an individual, on behalf of himself and others similarly situated and as a private attorney general pursuant to Labor Code § 2698 *et seq*., complains of Defendant BLVD RESIDENTIAL INC. ("BLVD") and the Doe Defendants ("Defendants") and each of them, as follows:

I.

<u>INTRODUCTION AND FACTUAL BACKGROUND</u>

1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of Plaintiff and the following classes and subclasses:

(1) all non-exempt employees who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California at any point from August 11, 2023 and continuing into the present. ("BLVD Non-Exempt Class");

(2) all non-exempt, hourly employees who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California at any point from August 11, 2023 and continuing into the present. ("Houry Non-Exempt Class");

(3) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from August 11, 2023 and continuing into the present. ("General Overtime Subclass");

(4) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than twelve (12) hours in a day and/or forty (40) hours in a week during a pay period from August 11, 2023 and continuing into the present. ("Doubletime Overtime Subclass");

(5) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where they also received a housing allowance, non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece rate compensation, flat sum production bonus, non-discretionary production bonus, attendance bonus, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay

codes “Housing Allow” from August 11, 2023 and continuing into the present. (“Regular Rate Overtime Subclass”);

(6) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than twelve (12) hours in a week during a period where they also received a housing allowance, non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece rate compensation, flat sum production bonus, non-discretionary production bonus, attendance bonus, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes “Housing Allow” from August 11, 2023 and continuing into the present. (“Regular Rate Doubletime Subclass”);

Collectively, Subclasses three (3), four (4), five (5), and six (6) may be referred to as the “Overtime Subclass.”

(7) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California who worked one or more shifts of more than six (6) hours as a non-exempt, hourly employee or other similar position from August 11, 2023 and continuing into the present. (“General Meal Period Subclass”);

(8) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California who were paid a meal and/or rest period premium within the same week that they also received a housing allowance non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece rate compensation, flat sum production bonus, non-discretionary production bonus, attendance bonus, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes “Housing Allow” from August 11, 2023 and continuing into the present. (“Meal/Rest Period Premium Subclass”);

Collectively, Subclasses seven (7) and eight (8) may be referred to as the “Meal Period Subclass.”

(9) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from August 11, 2023 and continuing into the present. (“General Rest Period Subclass”);

Collectively, Subclasses eight (8) and nine (9) may be referred to as the "Rest Period Subclass."

(10) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and whose employment concluded at any time between August 11, 2023 and continuing into the present. ("General Late Payment Subclass");

(11) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities for one or more pay periods in California, who received sick pay, and whose employment concluded at any time between August 11, 2023 and continuing into the present; ("Sick Pay Late Payment Subclass");

(12) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities for one or more pay periods in California, who received sick pay, and whose employment concluded at any time and also received a housing allowance, non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece rate compensation, flat sum production bonus, non-discretionary production bonus, attendance bonus, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow" between August 11, 2023 and continuing into the present; ("Sick Pay Incentive Pay Late Payment Subclass");

Collectively, Subclasses ten (10), eleven (11), and twelve (12) may be referred to as the "Late Payment Subclass."

These Classes and Subclasses may all collectively be referred to herein as the "Class" and the "Classes" where appropriate and for ease of reference.

2. This is also a representative action brought pursuant to Labor Code § 2698, *et seq*., on behalf of the State of California and several groups of aggrieved employees defined as follows:

(1) all non-exempt employees who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California at any point from August 11, 2023 and continuing into the present. ("BLVD Non-Exempt Aggrieved Employees");

(2) all non-exempt, hourly employees who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California at any point from August 11, 2023 and continuing into the present. ("Houry Non-Exempt Aggrieved Employees");

(3) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from August 11, 2023 and continuing into the present. ("General Overtime Aggrieved Employees");

(4) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than twelve (12) hours in a day and/or forty (40) hours in a week during a pay period from August 11, 2023 and continuing into the present. ("Doubletime Overtime Aggrieved Employees");

(5) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where they also received a housing allowance, non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece rate compensation, flat sum production bonus, non-discretionary production bonus, attendance bonus, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow" from August 11, 2023 and continuing into the present. ("Regular Rate Overtime Aggrieved Employees");

(6) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than twelve (12) hours in a week during a period where they also received a housing allowance, non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece rate compensation, flat sum production bonus, non-discretionary production bonus, attendance bonus, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow" from August 11, 2023 and continuing into the present. ("Regular Rate Doubletime Aggrieved Employees");

Collectively, aggrieved employee groups three (3), four (4), five (5), and six (6) may be referred to as the "Overtime Aggrieved Employees."

(7) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California who worked one or more shifts of more than six (6) hours as a non-exempt, hourly employee or other similar position from August 11, 2023 and continuing into the present. ("General Meal Period Aggrieved Employees");

(8) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California who were paid a meal and/or rest period premium within the same week that they also received a housing allowance non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece rate compensation, flat sum production bonus, non-discretionary production bonus, attendance bonus, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow" from August 11, 2023 and continuing into the present. ("Meal/Rest Period Premium Aggrieved Employees");

Collectively, aggrieved employee groups seven (7) and eight (8) may be referred to as the "Meal Period Aggrieved Employees."

(9) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from August 11, 2023 and continuing into the present. ("General Rest Period Aggrieved Employee");

Collectively, aggrieved employee groups eight (8) and nine (9) may be referred to as the "Rest Period Aggrieved Employees."

(10) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and whose employment concluded at any time between August 11, 2023 and continuing into the present. ("General Late Payment Aggrieved Employees");

(11) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities for one or more pay periods in California, who received sick pay, and whose employment concluded at any time between August 11, 2023 and continuing into the present; ("Sick Pay Late Payment Aggrieved Employee");

(12) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities for one or more pay periods in California, who received sick pay, and whose employment concluded at any time and also received a housing allowance, non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece rate compensation, flat sum production bonus, non-discretionary production bonus, attendance bonus, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow" between August 11, 2023 and continuing into the present; ("Sick Pay Incentive Pay Late Payment Aggrieved Employee");

Collectively, aggrieved employee groups ten (10), eleven (11), and twelve (12) may be referred to as the "Late Payment Aggrieved Employees."

These groups may all collectively be referred to herein as aggrieved employees and/or all aggrieved employees where appropriate.

3. Plaintiff, the Classes, and the aggrieved employees were employed by Defendant BLVD RESIDENTIAL INC. and any subsidiaries or affiliated companies and Does 1 through 50 (who include individuals acting on behalf an employer within the meaning of Labor Code § 558.1) within the State of California as a non-exempt, hourly employees at some point between August 11, 2023 and the present. Plaintiff is a former employee of Defendants who worked for Defendants in California.

4. At times throughout his employment with Defendants during the period of August 11, 2023 and continuing into the present, Plaintiff, the Classes, and the aggrieved employees worked shifts in excess of six (6) hours in a day, worked shifts in excess of eight (8) hours in a day, ten (10) hours in a day and/or worked in excess of forty (40) hours in a week or more.

5. At times throughout their employment with Defendants from August 11, 2023 and continuing into the present and within the past year, Plaintiff, the Classes, and the aggrieved employees worked enough hours to be eligible to receive overtime wages under IWC Wage Order No. 5-2001 and/or Labor Code section 510.

6. Defendants hire employees to work within the state of California who are covered by California Industrial Welfare Commission Occupational Wage Order No. 5-2001. Based upon information and belief, Defendants classified Plaintiff, the Classes, and the aggrieved employees as non-exempt for the purposes of overtime, meal periods, and rest periods.

7. Plaintiff and the Class received at least one wage statement between August 11, 2023 and continuing into the present.

8. Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles

"any employee receiving less than the legal minimum wage…to recover in a civil action the unpaid balance of the full amount of this minimum wage." IWC Wage Order No. 5-2001 and other applicable wage orders obligate employers to pay each employee minimum wages for all hours worked.

9. In addition, Labor Code § 1198 provides that "the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

10. At times during their employment with Defendants from August 11, 2023 and continuing into the present, Defendants engaged in a common policy and practice of requiring Plaintiff, the Class, and the aggrieved employees to perform work while off-the-clock. This includes, but is not limited to, requiring Plaintiff, the Class, and the aggrieved employees to respond to resident concerns while off-the-clock and off-duty, communicating with them while off-the-clock (including during meal periods and interrupting their meal periods), and prohibiting employees from smoking on the premises at all hours therefore failing to relieve them of all of their duties even while they were allegedly off-the-clock and Defendants required them to live under these conditions as a condition of their job. Defendants and their supervisory employees required and/or were aware that off-the-clock work was being performed.

11. At times throughout their employment with Defendants from August 11, 2023 and continuing into the present, Defendants also interrupted Plaintiff, the Classes, and the aggrieved employees meal and rest periods. *Barrett Business Services, Inc*., 29 Cal. App. 5th 778, 808 (2018) (affirming the award of PAGA penalties for violations of Labor Code § 512 where employees meal periods were interrupted and remanding to the trial court the amount of PAGA penalties that should be awarded based upon the minimum wage violations associated with the same interrupted meal periods under Labor Code section 1194.).

12. Based upon information and belief, Defendants' conduct in failing to pay Plaintiff, the Classes, and the aggrieved employees for such time was willful within the meaning of the California Labor Code as Defendants were willful.

13. Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code § 1194, Plaintiff, the Class, and the aggrieved employees could not agree to work for a lesser wage.

14. At times during their employment with Defendants from August 11, 2023 and continuing into the present, Defendants engaged in a common policy and practice of requiring Plaintiff, the Class, and the aggrieved employees to perform work while off-the-clock. This includes, but is not limited to, requiring Plaintiff, the Class, and the aggrieved employees to respond to resident concerns while off-the-clock and off-duty, communicating with them while off-the-clock (including during meal periods and interrupting their meal periods), and prohibiting employees from smoking on the premises at all hours therefore failing to relieve them of all of their duties even while they were allegedly off-the-clock and Defendants required them to live under these conditions as a condition of their job. Defendants and their supervisory employees required and/or were aware that off-the-clock work was being performed.

15. At times throughout their employment with Defendants from August 11, 2023 and continuing into the present, Defendants also interrupted Plaintiff, the Classes, and the aggrieved employees meal and rest periods. *Barrett Business Services, Inc*., 29 Cal. App. 5th 778, 808 (2018) (affirming the award of PAGA penalties for violations of Labor Code § 512 where employees meal periods were interrupted and remanding to the trial court the amount of PAGA penalties that should be awarded based upon the minimum wage violations associated with the same interrupted meal periods under Labor Code section 1194.).

16. Due to the application of these policies and practices, Plaintiff, the Class, and the aggrieved employees were never relieved of all duties during their meal/rest periods and frequently were required to perform work while off-the-clock. Since Plaintiff, the Class, and the aggrieved employees later and/or had already worked eight (8) hours aside from the off-the-clock time, many of the hours worked by Plaintiff, the Class, and the aggrieved employees were misclassified as regular hours instead of overtime hours and/or double time hours resulting in the underpayment of overtime wages in addition to the failure to pay for all hours worked. Such conduct violated Labor Code § 510.

17. Based upon information and belief, at times from August 11, 2023 and continuing into the present, Defendants paid Plaintiff, the Class, and the aggrieved employees a housing allowance, non-discretionary bonuses, incentive payments/pay, shift differentials, hazard pay, piece rate compensation, flat sum production bonus, non-discretionary production bonus, attendance bonus, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow," but failed to include such compensation and/or at the correct amounts when calculating and paying overtime wages.

18. Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period ***within*** the first five (5) hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer may not employ an employee for a work period of more than ten (10) hours, without providing the employee with a second meal period of not less than thirty (30) minutes. Moreover, the second meal period may not be waived if the total hours worked is more than twelve (12) hours.

19. Similarly, IWC Wage Order No. 5-2001 and other applicable wage orders prohibit an employer from "employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order No. 5-2001 and other applicable wage orders further obligates employers to provide an employee to "pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. Labor Code section 1198 prohibits an employer from requiring an employee to

work beyond the “standard conditions of labor fixed by the commission…or under conditions of labor prohibited by the order.”

20. Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Similarly, IWC Wage Order No. 5-2001 prohibit an employer from “employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order No. 5-2001 further obligates employers to provide an employee to “pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided. Accordingly, for each day that Plaintiff, the Class, and the aggrieved employees did not receive compliant meal periods, they were entitled to receive meal period premiums pursuant to Labor Code § 226.7 and IWC Wage Order No. 5-2001.

21. At times from August 11, 2023 and continuing into the present, Defendants failed to authorize and permit Plaintiff, the Class, and the aggrieved employees to receive lawful meal periods, failed to advise them of their right to such meal periods, failed to authorize and permit them to take timely first meal periods, failed to authorize and permit them to take second meal periods, rounded the time entries associated with meal periods, and failed to authorize and permit employees to take 30-minute meal periods on occasion, failed to relieve them of all duties during their meal periods, and interrupted and/or allowed and, based upon information and belief, and/or through their staffing and other policies encouraged its customers to interrupt Plaintiff, the Class Members, and the aggrieved employees meal periods.

22. At times from August 11, 2023 and continuing into the present, Defendants’ meal period policies and practices also disincentivized and discouraged Plaintiff, the Class, and the aggrieved employees from taking timely first meal periods within the first five (5) hours of their shift. Defendants’ understaffing policies and practices also pressured, coerced, and forced employees to take untimely first meal periods and/or forgo meal periods due to a lack of sufficient coverage and receive interrupted meal periods.

23. At times from August 11, 2023 and continuing into the present, Defendants also failed to pay Plaintiff, the Class, and the aggrieved employees meal period premiums for each workday that the employees did not receive a compliant meal period and/or at the proper rate. Labor Code § 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC").

24. At times from August 11, 2023 and continuing into the present, when Defendants paid meal or rest period premiums to Plaintiff, the Class, and the aggrieved employees, Defendants improperly paid the premium at the employee's hourly base rate and/or failed to include their housing allowance, non-discretionary bonuses, incentive payment/pay, shift differentials, hazard pay, flat sum production bonuses, non-discretionary production bonuses, attendance bonuses, and/or any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow." For instance, for the pay period of September 24, 2023 to October 7, 2023, Defendants improperly paid Plaintiff's meal period premiums at his hourly base rate of $25.00 instead of his regular rate that included his housing allowance:

CO.	FILE	DEPT.	CLOCK	VCHR. NO.	075
K42	296982	000445		0000410238	1

Earnings Statement

BLVD RESIDENTIAL INC.
4080 CAMPBELL AVENUE
MENLO PARK, CA 94025

Period Beginning: 09/24/2023
Period Ending: 10/07/2023
Pay Date: 10/13/2023

Filing Status: Married filing jointly
Exemptions/Allowances:
Federal: Standard Withholding Table

Social Security Number: XXX-XX-[redacted]

ANTONIO URRUTIA
[redacted]

Earnings	rate	hours	this period	year to date
Regular	25.0000	80.00	2,000.00	12,765.50
Overtime	45.0750	1.92	86.54	1,895.40
Housing Allow			404.00*	2,828.00
Meal Per Prem	25.0000	9.00	225.00	450.00
HOL				200.00
Gross Pay			$2,715.54	18,138.90

Your federal taxable wages this period are $2,282.65

Other Benefits and Information	this period	total to date
Totl Hrs Worked	81.92	

25. Moreover, for the pay period of October 22, 2023 to November 4, 2023, Defendants improperly paid Plaintiff's meal period premiums and sick pay at his hourly base rate of $25.00 instead of his regular rate that included his housing allowance despite making an

adjustment to his overtime wages to include the housing allowance within this regular rate although Defendants appear not to have calculated the overtime rates correctly either:

BLVD RESIDENTIAL INC.
4080 CAMPBELL AVENUE
MENLO PARK, CA 94025

Period Beginning: 10/22/2023
Period Ending: 11/04/2023
Pay Date: 11/10/2023

Filing Status: Married filing jointly
Exemptions/Allowances:
Federal: Standard Withholding Table

Social Security Number: XXX-XX-[redacted]

ANTONIO URRUTIA
[redacted]

Earnings	rate	hours	this period	year to date
Regular	25.0000	65.93	1,648.25	16,413.75
Overtime	37.5000	3.53	132.38	2,276.59
Housing Allow			404.00*	3,636.00
Meal Per Prem	25.0000	1.00	25.00	655.30
MealPen Prem			1.00	1.00
OT Premium	7.5750	3.53	26.74	26.74
Sick Hours	25.0000	16.00	400.00	400.00
HOL				200.00
Gross Pay			$2,637.37	23,609.38

* Excluded from federal taxable wages

Your federal taxable wages this period are $2,204.48

Other Benefits and Information	this period	total to date
Totl Hrs Worked	69.46	
Sick Available		10.40
Vac Available		27.72

26. Plaintiff alleges that Defendants engaged in the same above-described conduct with respect to the Class Members' and aggrieved employees at times between the period of August 11, 2023 and continuing into the present.

27. At times between the period of August 11, 2023 and continuing into the present Defendants also failed to relieve Plaintiff, the Class, and the aggrieved employees from all control during their meal and rest periods and off-hours and continued to exercise control over them by prohibiting them from smoking resulting in numerous meal/rest period violations.

28. Defendants' common policy and practice of failing to include the housing allowance, non-discretionary bonuses, incentive payments/pay, shift differentials, hazard pay, flat sum production bonuses, non-discretionary production bonuses, attendance bonuses, and/or any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow" when calculating meal and rest period premiums within the meaning of Labor Code § 226.7 resulted in Plaintiff, the Class, and the aggrieved employees being paid meal/rest period premiums at lower rates (including their hourly base rate) instead of at their regular rate resulting in the underpayment of meal and rest period premiums. Plaintiff contends that Defendants' policies and practices as alleged above violated Labor Code § 226.7. *Ferra v.*

Loews Hollywood Hotel, LLC, 11 Cal. 5th 858, 878 (2021) ("we hold that the term 'regular rate of compensation' in section 226.7(c) has the same meaning of regular rate of pay' in section 510(a) and encompasses not only hourly wages, but all nondiscretionary payments for work performed by the employee.").

29. Labor Code § 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC"). Under IWC Wage Order Nos. 5-2001, an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked. *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that "during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time.").

30. At times from August 11, 2023 and continuing into the present and within the past year, Defendants failed to provide Plaintiff, the Class, and the aggrieved employees with rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked in violation of Labor Code § 226.7 and IWC Wage Order No. 5-2001 and other applicable wage orders. Instead, Defendants regularly and consistently required Plaintiff, the Class, and the aggrieved employees to forgo rest periods and/or required them to remain on the premises and failed to relieve them of all duties.

31. From August 11, 2023 and continuing into the present Plaintiff, the Class, and the aggrieved employees were denied rest periods as a result of Defendants' understaffing practices and policies. Notably, although Defendants' rest period policies and practices are not compliant, they also pressured and coerced employees to forgo rest periods and made it difficult for employees to take lawful duty-free rest periods both due to their understaffing policies and practices and otherwise and as discussed above exercised control over them during their rest periods.

32. At times from August 11, 2023 and continuing into the present, when Defendants paid meal or rest period premiums to Plaintiff, the Class, and the aggrieved employees,

Defendants improperly paid the premium at the employee's hourly base rate and/or failed to include their housing allowance, non-discretionary bonuses, incentive payments/pay, shift differentials, hazard pay, flat sum production bonuses, non-discretionary production bonuses, attendance bonuses, and/or any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow." For instance, for the pay period of September 24, 2023 to October 7, 2023, Defendant improperly paid Plaintiff's meal period premiums at his hourly base rate of $25.00 instead of his regular rate that included his housing allowance.

33. Defendants' common policy and practice of failing to include the housing allowance include their housing allowance, non-discretionary bonuses, incentive payment/pay, shift differentials, hazard pay, flat sum production bonuses, non-discretionary production bonuses, attendance bonuses, and/or any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow" when calculating meal and rest period premiums within the meaning of Labor Code § 226.7 resulted in them being paid at lower rates (including their hourly base rate) instead of at their regular rate resulting in the underpayment of meal and rest period premiums. Plaintiff contends that Defendants' policies and practices as alleged above violated Labor Code § 226.7. *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 878 (2021) ("we hold that the term 'regular rate of compensation' in section 226.7(c) has the same meaning of regular rate of pay' in section 510(a) and encompasses not only hourly wages, but all nondiscretionary payments for work performed by the employee.").

34. As to Plaintiff, the Class, and the aggrieved employees from August 11, 2023 and continuing into the present, Defendants also failed to provide accurate itemized wage statements in accordance with Labor Code § 226(a)(1, 2, 5, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

> (1) gross wages earned;
> (2) total hours worked by the employee;
> (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;

(4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
(5) net wages earned;
(6) the inclusive dates of the period for which the employee is paid;
(7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
(8) the name and address of the legal entity that is the employer…;
(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee…

35. Similarly, Labor Code § 226(e) provides:

(e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees.
(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.
(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).
(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).
(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.
(iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

36. As to Plaintiff, the Class, and the aggrieved employees from August 11, 2023 and continuing into the present, due to Defendants' failure to pay Plaintiff, the Class, and the aggrieved employees all minimum wages, overtime wages, meal period premiums, and rest period premiums, the wage statements issued by Defendants do not indicate the correct amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Defendants have violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff, the Class, and the aggrieved employees.

37. Separate and independent from the foregoing, from August 11, 2023 and continuing into the present, some of the wage statements issued by Defendants to Plaintiff include categories of pay that require information about the hours and rate for which there is none. For instance, but not limited to this example, for the pay period of October 22, 2023 to November 4, 2023, Plaintiff received a wage statement that listed his MealPen Prem at $1.00 with no rate nor hours or amounts.

BLVD RESIDENTIAL INC.
4080 CAMPBELL AVENUE
MENLO PARK, CA 94025

Period Beginning: 10/22/2023
Period Ending: 11/04/2023
Pay Date: 11/10/2023

Filing Status: Married filing jointly
Exemptions/Allowances:
Federal: Standard Withholding Table

ANTONIO URRUTIA
[redacted]

Social Security Number: XXX-XX[redacted]

Earnings	rate	hours	this period	year to date
Regular	25.0000	65.93	1,648.25	16,413.75
Overtime	37.5000	3.53	132.38	2,276.59
Housing Allow			404.00*	3,636.00
Meal Per Prem	25.0000	1.00	25.00	655.30
MealPen Prem			1.00	1.00
OT Premium	7.5750	3.53	26.74	26.74
Sick Hours	25.0000	16.00	400.00	400.00
HOL				200.00
Gross Pay			$2,637.37	23,609.38

* Excluded from federal taxable wages

Your federal taxable wages this period are $2,204.48

Other Benefits and Information	this period	total to date
Totl Hrs Worked	69.46	
Sick Available		10.40
Vac Available		27.72

38. Plaintiff contends that Defendants failed to include the number of hours worked at these rates on Plaintiff, itemized wage statements in violation of Labor Code § 226(a)(9).

39. In addition, the wage statements issued to Plaintiff, the Class, and the aggrieved employees did not include the actual total hours worked by the employee due to the-off-the-clock work in violation of Labor Code § 226(a)(2). As previously explained, in express violation of Section 7(A)(3) of IWC Wage Order No. 5-2001 which requires employers to record "when the employee begins and ends **each work period**." Instead, Defendants failed to report the time that it knew that Plaintiff, the Class, and the aggrieved employees were working while off-the-clock. In other words, Defendants did not include the total hours worked by the employee during the pay period including hours that it knew they had worked regardless of whether or not compensation was provided for such time in violation of Labor Code § 226(a)(2).

40. In addition to violating Labor Code § 226(a), Defendants also knowingly and intentionally failed to pay Plaintiff and the Class minimum wages, overtime wages, meal period premiums, and rest periods premiums including at the proper rates.

41. In addition to violating Labor Code § 226(a), Defendants also knowingly and intentionally failed to include the number of hours worked and rates associated with several categories of pay in violation of Labor Code section 226(a)(9).

42. Moreover, Plaintiff and the Class also suffered legal "injury" for purposes of Labor Code section 226(e) insofar as they were unable to readily and easily determine from the wage statements themselves the information required to be set forth by Section 226(a), the information provided by Defendants were confusing and inaccurate. In addition, Plaintiff and the Class were unable to determine at all the total hours worked by the employee, the gross wages earned, the net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee for the reasons discussed above.

43. As described in detail above, Defendants failed to pay Plaintiff, the Class, the Late Payment Class, and the aggrieved employees all minimum wages, all overtime wages, meal period premiums, rest period premiums, for the reasons discussed above, within the time constraints of Labor Code §§ 201-202 upon the conclusion of their employment.

44. Under Labor Code §§ 201-202, an employer must provide an employee wages at the time of discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . ." for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, 68 Cal.App.4th 487, 492 (1998).

45. In addition, separate and independent of the foregoing at times between August 11, 2023 and continuing into the present, Defendants failed to pay Plaintiff, the Late Payment Class, and the aggrieved employees sick pay at the correct rate.

46. Labor Code § 246 requires employer to calculate sick leave pay based upon one of the following formulas:

> (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.
>
> (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.
>
> (3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

Lab. Code § 246.

47. In addition, separate and independent of the foregoing at times between August 11, 2023 and continuing into the present, Defendants failed to include the housing allowance, non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece rate compensation, flat sum production bonus, non-discretionary production bonus, attendance bonus, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow" when calculating and paying sick pay. As a result, when Plaintiff, the Late Payment Class, and the aggrieved employees' employment ended, they left their employment without having received compensation for all of their sick pay that they were owed under Labor Code § 246 and resulting in a violation of Labor Code §§ 201-203. As a result of Defendant's underpayment of sick pay, Plaintiff, the other Late Payment Subclass members, and the aggrieved employees experienced a violation of Labor Code §§ 201-202 upon separation from Defendant. *See Powell v. Walmart Inc.,* No. 3:20-cv-2412-BEN-LL, 2021 U.S. Dist. LEXIS 20777, at *6 (S.D. Cal. Feb. 2, 2021) (denying a motion to dismiss claims under Labor Code section 203 based upon the employer's alleged failure to include incentive pay when calculating and paying sick pay); *accord Flores v. Dart Container Corp.*, No. 2:19-cv-00083 WBS EFB, 2020 U.S. Dist. LEXIS 93524, at *7 (E.D. Cal. May 27, 2020).

48. Defendants failed to pay Plaintiff, the Late Payment Class members, and the aggrieved employees whose employment concluded all wages owed, including but not limited to minimum wages, overtime wages, sick pay wages (at the correct rate), meal period premiums,

and rest period premiums within the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation.

49. Separate and independent of the foregoing, Defendants also failed to pay Plaintiff, the other Late Payment Class members, and the aggrieved employees all of their final wages at the time of their termination, at the time of their last day if they gave more than three (3) days' advance notice, or within 72 hours of a resignation without notice as required by Labor Code §§ 201 and 202. Thus, as result of Defendants' faulty policies described above, Plaintiff, the Late Payment Subclass, and the aggrieved employees left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

50. Labor Code § 204 expressly requires that "[a]ll wages…earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Defendants pay Plaintiff and all aggrieved employees on a bi-weekly basis.

51. Due to Defendants' failure to pay Plaintiff and all aggrieved employees all minimum wages, overtime wages, meal period premiums, rest period premiums, and sick pay for the reasons discussed above, Defendants failed to timely pay Plaintiff and all aggrieved employees all wages owed within seven (7) days of the close of the payroll period in accordance with Labor Code § 204(d) on a regular and consistent basis.

52. Labor Code § 210 provides that "in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections…204…shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld." As a result of the faulty compensation policies and practices described in detail above, Plaintiff and the other aggrieved employees are entitled to recover penalties under Labor Code § 210 through PAGA. *See Amaral v. Cintas Corp. No.* 2, 163 Cal.App.4th 1157, 1209 (2008) (affirming an award of

Labor Code section 210 penalties under PAGA due to the employer's failure to timely pay wages at the proper rate in accordance with a local wage ordinance).

53. Labor Code § 1174 provides that each employer shall keep "payroll records showing the hours worked daily by and the wages paid to…employees employed at…establishments." An employer who fails to maintain the records proscribed by Labor Code § 1174 is subject to a civil penalty of five hundred ($500) dollars under Labor Code § 1174.5.

54. As previously explained, Defendants failed to maintain accurate records of the total hours worked by the aggrieved employees or of the time associated with off-the-clock work as described above and failed to record time that employees were subject to Defendants' control and required to work during their meal/rest periods on a regular and consistent basis in express violation of Section 7(A)(3) of IWC Wage Order No. 4-2001 which requires employers to record "when the employee begins and ends each work period."

55. Due to Defendants' regular and consistent practice of not recording all hours worked, including the time associated with off-the-clock work and as described above, the time records maintained by Defendants do not show the actual hours worked daily by Plaintiff and the aggrieved employees. This caused Plaintiff and the other aggrieved employees time records not to actually show the total hours worked daily by each of them throughout the PAGA period in violation of Labor Code §§ 1174 and 1174.5.

56. Plaintiff filed his PAGA Notice online with the Labor Workforce Development Agency ("LWDA") and sent a letter by certified mail to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq*. As required by PAGA, Plaintiff submitted the $75.00 filing fee to the LWDA. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received and/or will have been received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the postmark date of the PAGA notice. Plaintiff is therefore, entitled to proceed with a civil action pursuant to Labor Code § 2699.

II.

JURISDICTION AND VENUE

57. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds $25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

58. This Court has personal jurisdiction over Defendant BLVD Residential Inc. because Defendant has caused injuries in the County of San Mateo, and State of California through their acts, and by their violation of the California Labor Code and California law in San Mateo County and Defendant's principal place of business is 4080 Campbell Avenue Menlo Park, CA 94025.

59. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure §395. Defendants operates within California and do business within Sam Mateo County and Defendant Blvd Residential Inc. is headquartered in San Mateo County. The unlawful acts alleged herein have a direct effect on Plaintiff and the Classes within the State of California and the County of San Mateo.

60. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

III.

PARTIES

A. PLAINTIFF

61. Plaintiff ANTONIO URRUTIA is a former employee of Defendants who worked for Defendants in California.

62. Plaintiff and the Class were regularly required to:

a. Work hours without receiving compensation and/or minimum wages for all hours worked;

b. Work overtime hours without receiving any compensation and/or the proper amount of compensation;

c. Work without being provided lawful meal periods;

d. Work without being provided lawful rest periods;

e. Were denied meal/rest period premiums including payments at the proper amounts;

f. Work without being provided an accurate itemized wage statement that accurately indicates the gross wages earned, the total hours worked by the employee, the net wages earned, as well as all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee;

g. Were deprived of wages that Defendants knew were due and owing, yet failed to pay at the time of termination and/or within 72 hours of resignation for those former employees who did not provide advance notice; and

h. Work without being reimbursed for expenses incurred in direct consequence of the discharge of his or her duties.

B. DEFENDANTS

63. Defendant BLVD RESIDENTIAL INC. is a Delaware Corporation whose principal place of business is 4080 Campbell Ave Menlo Park, CA 94025 in San Mateo County. Defendant has done and does business throughout the State of California and in San Mateo County.

64. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and

capacities of the Defendants designated hereinafter as DOES when such identities become known.

65. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the Class and/or as alter egos of each other.

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IV.

CLASS ACTION ALLEGATIONS

66. Plaintiff brings this action on behalf of himself and all others similarly situated as a Class Action pursuant to §382 of the Code of Civil Procedure. Plaintiff seeks to represent a Class and Subclasses composed of and defined as follows:

(1) all non-exempt employees who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California at any point from August 11, 2023 and continuing into the present. (“BLVD Non-Exempt Class”);

(2) all non-exempt, hourly employees who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California at any point from August 11, 2023 and continuing into the present. (“Houry Non-Exempt Class”);

(3) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from August 11, 2023 and continuing into the present. (“General Overtime Subclass”);

(4) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than twelve (12) hours in a day

and/or forty (40) hours in a week during a pay period from August 11, 2023 and continuing into the present. ("Doubletime Overtime Subclass");

(5) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where they also received a housing allowance, non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece rate compensation, flat sum production bonus, non-discretionary production bonus, attendance bonus, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow" from August 11, 2023 and continuing into the present. ("Regular Rate Overtime Subclass");

(6) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than twelve (12) hours in a week during a period where they also received a housing allowance, non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece rate compensation, flat sum production bonus, non-discretionary production bonus, attendance bonus, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow" from August 11, 2023 and continuing into the present. ("Regular Rate Doubletime Subclass");

Collectively, Subclasses three (3), four (4), five (5), and six (6) may be referred to as the "Overtime Subclass."

(7) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California who worked one or more shifts of more than six (6) hours as a non-exempt, hourly employee or other similar position from August 11, 2023 and continuing into the present. ("General Meal Period Subclass");

(8) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California who were paid a meal and/or rest period premium within the same week that they also received a housing allowance non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece rate compensation, flat sum production bonus, non-discretionary production bonus, attendance bonus, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow" from August 11, 2023 and continuing into the present. ("Meal/Rest Period Premium

Subclass");

Collectively, Subclasses seven (7) and eight (8) may be referred to as the "Meal Period Subclass."

(9) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from August 11, 2023 and continuing into the present. ("General Rest Period Subclass");

Collectively, Subclasses eight (8) and nine (9) may be referred to as the "Rest Period Subclass."

(10) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and whose employment concluded at any time between August 11, 2023 and continuing into the present. ("General Late Payment Subclass");

(11) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities for one or more pay periods in California, who received sick pay, and whose employment concluded at any time between August 11, 2023 and continuing into the present; ("Sick Pay Late Payment Subclass");

(12) all individuals who were employed by BLVD Residential Inc. or its predecessor, merged or related entities for one or more pay periods in California, who received sick pay, and whose employment concluded at any time and also received a housing allowance, non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece rate compensation, flat sum production bonus, non-discretionary production bonus, attendance bonus, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow" between August 11, 2023 and continuing into the present; ("Sick Pay Incentive Pay Late Payment Subclass");

Collectively, Subclasses ten (10), eleven (11), and twelve (12) may be referred to as the "Late Payment Subclass."

These Classes and Subclasses may all collectively be referred to herein as the "Class" and the "Classes" where appropriate and for ease of reference.

67. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to amend or modify the class description with greater specificity, by division into subclasses, or by limitation to particular issues.

68. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the Proposed Classes are easily ascertainable.

A. Numerosity

69. The potential members of the Proposed Classes as defined are each so numerous that joinder of all the members of the Proposed Classes is impracticable. While the precise number of proposed Class Members in each Class has not been determined at this time, Plaintiff is informed and believes that Defendants currently employ, and during the relevant time periods employed to be more than 100 members or more of the Proposed Class and Subclasses at any given time.

70. Plaintiff alleges that Defendants' employment records would provide information as to the number and location of all Proposed Class members. Joinder of all members of the Proposed Class and Subclasses is not practicable.

B. Commonality

71. There are questions of law and fact common to the Proposed Classes[1] that predominate over any questions affecting only individual Proposed Class Members. These common questions of law and fact include, without limitation:

a. Whether Defendants failed to pay minimum wages for all hours worked as required by Labor Code §§ 1194, 1194.2, and 1197 as well as IWC Wage Order No. 5-2001 to the Class.

b. Whether Defendants failed to pay wages and/or overtime compensation and at the correct rate as required by Labor Code § 510 to the Overtime Class;

[1] Plaintiff reserves his right to designate subclasses within the Classes including designating an Unfair Competition subclass for each class.

c. Whether Defendants violated Labor Code §§ 226.7 and IWC Wage Order Nos. 5-2001, by failing to authorize and permit the Meal Period Class Members to take a timely, uninterrupted, duty-free meal period within the first five (5) hours of their shift, second meal periods as well as their failure to pay the Meal Period Class one additional hour of pay at the employees' at their regular rate of compensation when they did not receive a compliant meal period and/or at the correct rate;

d. Whether Defendants violated Labor Code § 226.7 and IWC No. 5-2001, by failing to inform Plaintiff and the Rest Period Class of their right to receive a ten (10) minute duty-free rest period for every four hours of work or major fraction thereof, failing to relieve employees of all control during rest periods, and by failing to compensate said employees one (1) additional hour of pay at the employee's regular rate of compensation in lieu of rest periods and/or at the correct rate;

e. Whether Defendants violated Labor Code § 226(a) and (e) as well as IWC by failing to provide an accurate itemized wage statements that accurately indicated, the gross wages earned, all deductions from wages, the net wages earned, as well as all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee to the Wage Statement Subclass;

f. Whether Defendants violated §§ 201-203 of the Labor Code by failing to pay compensation due and owing at the time that the Late Payment Class Members' employment with Defendants concluded;

g. Whether Defendants violated § 17200 et seq. of the Business & Professions Code by engaging in the acts previously alleged against the Class;

C. Typicality

72. The claims of Plaintiff are typical of the claims of the Proposed Class and Subclasses. Plaintiff and all members of the Proposed Class and Subclasses sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

D. Adequacy of Representation

73. Plaintiff will fairly and adequately represent and protect the interests of the members of the proposed Classes. Counsel who represents Plaintiff and the Proposed Classes is competent and experienced in litigating large employment class actions, and have the financial resources to litigate the claims at issue.

E. Superiority of Class Action

74. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Proposed Class Members is not practicable, and questions of law and fact common to the Proposed Class predominate over any questions affecting only individual members of the Proposed Class. Each member of the Proposed Class has been damaged and is entitled to recovery by reason of Defendants' illegal policy and/or practice of failing to pay all wages due, failing to provide meal periods, failing to provide rest periods, and failing to provide accurate itemized wage statements.

75. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

V.
FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF LABOR CODE §§ 1194 and 1194.2 AND IWC WAGE ORDER NO. 5-2001
[Against All Defendants by Plaintiff and the Class]

76. Plaintiff, on behalf of himself and the Class realleges and incorporates by reference all previous paragraphs.

77. Section 1194 of the Labor Code provides, in relevant part:

> Notwithstanding any agreement to work for a lesser wage, any employee receiving less than minimum wage…applicable to the employee is entitle to recover in a civil action the unpaid balance of the full amount of this minimum wage …, including interest thereon, reasonable attorney's fees, and costs of suit.

78. Section 1194.2 of the Labor Code provides, in relevant part:

> In any action under…Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission,

an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

79. As set forth above, during statutory period applicable to the claims in this action, including within the past year, and continuing into the present, Plaintiff and the Class were not compensated for all hours worked as a result of Defendants' policies and practices described in detail above.

80. In failing to pay Plaintiff, the Class, and the Non-Exempt Class, for all hours worked, for the reasons described above, Defendants willfully and intentionally violated Labor Code § 1194 and acted in bad faith. Accordingly, pursuant to sections 1194 and 1194.2 of the California Labor Code, Plaintiff and the Class are entitled to recover, either their unpaid hourly wages due, or minimum wage plus interest and/or liquidated damages in an additional amount equal to the total amount of wages unlawfully withheld during the class period.

/ / /

VI.
SECOND CAUSE OF ACTION
FAILURE TO PAY WAGES AND/OR OVERTIME UNDER LABOR CODE §§ 510, 1194, and 1199
[Against All Defendants by Plaintiff, the Class, the General Overtime Subclass, the Doubletime Overtime Subclass, the Regular Rate Overtime Subclass, and the Regular Rate Doubletime Subclass]

81. Plaintiff, on behalf of himself, the Class, the Class, the General Overtime Subclass, the Doubletime Overtime Subclass, the Regular Rate Overtime Subclass, and the Regular Rate Doubletime Subclass realleges and incorporates by reference all previous paragraphs.

82. Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code § 1194, Plaintiff and the Class could not agree to work for a lesser wage.

83. In addition, Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful.

84. Similarly, Labor Code § 1198 provides that "the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

85. As discussed in detail above, at times from August 11, 2023 and continuing into the present, Defendants failed to pay Plaintiff, wages for all hours worked (including overtime hours) and failed to pay overtime wages at the proper rate.

86. Based upon information and belief, at times from August 11, 2023 and continuing into the present, Defendants failed to pay Plaintiff, the Class, the Non-Exempt Class, the Non-Exempt Overtime Class, and the Incentive Pay Overtime Subclass at one and one-half times their regular rate and instead underpaid their overtime wages.

87. Defendants conduct, as described above was willful.

88. As a result of the unlawful acts of Defendants, Plaintiff, the Class, the General Overtime Subclass, the Doubletime Overtime Subclass, the Regular Rate Overtime Subclass, and the Regular Rate Doubletime Subclass have been deprived of wages and/or overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

VII.
THIRD CAUSE OF ACTION
FAILURE TO PROVIDE LAWFUL MEAL PERIODS PURSUANT TO LABOR CODE §§ 226.7 and 512; IWC WAGE ORDER NO. 5-2001
[Against All Defendants by Plaintiff, the Class, the General Meal Period Subclass, and the Meal/Rest Period Premium Subclass]

89. Plaintiff, on behalf of himself, the Class, the General Meal Period Subclass, and the Meal/Rest Period Premium Subclass realleges and incorporates by reference all previous paragraphs.

90. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each non-compliant meal period an employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours.

91. At points between August 11, 2023 and continuing into the present, Plaintiff, the Class, and the Meal Period Class consistently worked shifts over six (6) hours and did not receive timely first meal periods within the first five (5) hours of their shifts.

92. During the statutory period applicable to their claims, Plaintiff, the Class, and the Meal Period Class were not compensated with one (1) hours' worth of pay at their regular rate of compensation when they were not provided with a compliant meal period or at the proper rate based upon Defendants' unlawful compensation policies detailed above.

93. At times between August 11, 2023 and continuing into the present, Defendants had a common policy and practice of failing to include compensation associated with housing allowances, non-discretionary bonuses, incentive payment/pay, shift differentials, hazard pay, flat sum production bonuses, non-discretionary production bonuses, attendance bonuses, and/or any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes "Housing Allow" when calculating and paying meal period premiums. Instead of paying meal/rest period premiums at employees' regular rates, on some occasions that Plaintiff, the Class and the Meal Period Class received a meal period premium, Defendants improperly paid the premium at the employee's hourly base rate instead of at their regular rate and/or a rate lower than their regular rate.

94. Plaintiff contends that Defendants' policies and practices as alleged above violated Labor Code § 226.7 consistent with the California Supreme Court's decision in Ferra v. Loews Hollywood Hotel, LLC, 11 Cal. 5th 858, 878 (2021) ("we hold that the term 'regular rate of compensation' in section 226.7(c) has the same meaning of regular rate of pay' in section 510(a) and encompasses not only hourly wages, but all nondiscretionary payments for work performed by the employee.").

95. Pursuant to Labor Code §226.7, Plaintiff, the Class, the General Meal Period Subclass, and the Meal/Rest Period Premium Subclass Members are entitled to damages in an amount equal to one (1) hour of wages per non-compliant meal break, per day in a sum to be proven at trial.

VIII.
FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE LAWFUL REST PERIODS AND PAY NON-COMPLIANT REST PERIOD PREMIUMS PURSUANT TO LABOR CODE § 226.7 AND IWC WAGE ORDER NO. 5-2001, § 12
[Against All Defendants by Plaintiff, Class, the Rest Period Subclass, the Meal/Rest Period Premium Subclass]

96. Plaintiff, on behalf of himself, Class, the Rest Period Subclass, the Meal/Rest Period Premium Subclass, realleges and incorporates by reference all previous paragraphs.

97. Labor Code § 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC"). Under IWC Wage Order No. 5-2001 an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked.

98. At times throughout during his employment with Defendants from August 11, 2023 and continuing into the present, Defendants failed to provide Plaintiff,, the Class, and the Rest Period Subclass with rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked in violation of Labor Code § 226.7 and IWC Wage Order No. 5-2001 and other applicable wage orders. Instead, Defendants regularly and consistently required Plaintiff, the Class, and the Rest Period Class to forgo rest periods and/or failed to relieve them of all duties.

99. At times throughout his employment with Defendants from August 11, 2023 and continuing into the present, Plaintiff, the Class, and the Rest Period Subclass were denied rest periods as a result of Defendants' understaffing practices and policies. Notably, although Defendants' rest period policies and practices are not compliant, they also pressured and coerced employees to forgo rest periods and made it difficult for employees to take lawful duty-free rest periods both due to their understaffing policies and practices and otherwise. Further, as discussed

above Defendants failed to relieve Plaintiff, the Class, and the Rest Period Subclass of all duties. Plaintiff, the Class, and the Rest Period Subclass often did not receive rest period premiums on these occasions. Plaintiff contends that Defendants applied the same policies and practices against the Class.

100. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the Class, the Rest Period Subclass, and the Meal/Rest Period Premium Subclass were not compensated with one (1) hours' worth of pay at their regular rate of compensation when they were not provided with a compliant rest period and/or their rest period was interrupted and/or they did not receive a lawful rest period in accordance with Labor Code § 226.7(b).

101. From August 11, 2023 and continuing into the present and within the past year, when Defendants paid rest period premiums, Defendants improperly paid the premium to Plaintiff, the Class, and the Rest Period Class at the employee's hourly base rate instead of at their regular rate and/or at a rate lower than their regular rate as discussed in detail above. Plaintiff contends that Defendants' policies and practices as alleged above violated Labor Code § 226.7 consistent with the California Supreme Court's decision in *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 878 (2021) ("we hold that the term 'regular rate of compensation' in section 226.7(c) has the same meaning of regular rate of pay' in section 510(a) and encompasses not only hourly wages, but all nondiscretionary payments for work performed by the employee.").

102. Based upon the foregoing, at all times pertinent hereto, Defendants failed to authorize and permit Plaintiff, the Class, and the Rest Period Class, to take duty-free rest periods of not less than ten (10) minutes net for every major fraction of four (4) hours worked.

103. Pursuant to Labor Code § 226.7, Plaintiff, the Class, and the Rest Period Class are entitled to damages in an amount equal to one (1) hour of wages per non-compliant rest period, in a sum to be proven at trial.

IX.
FIFTH CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE § 226(e)
[Against all Defendants on behalf of Plaintiff, the Class, and all Subclasses]

104. Plaintiff, on behalf of himself and the Class, realleges and incorporates by reference all previous paragraphs and all subsequent paragraphs.

105. As to Plaintiff, the Class, from at August 11, 2023 and continuing into the present, Defendants also failed to provide accurate itemized wage statements in accordance with Labor Code § 226(a)(1, 2, 5, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

> (1) gross wages earned;
> (2) total hours worked by the employee;
> (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
> (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
> (5) net wages earned;
> (6) the inclusive dates of the period for which the employee is paid;
> (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
> (8) the name and address of the legal entity that is the employer…;
> (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee…

106. Similarly, Labor Code § 226(e) provides:

> (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees.
> (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.
> (B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:
>
> > (i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).
> > (ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).
> > (iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.
> > (iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

107. As to Plaintiff and the Class, from August 11, 2023 and continuing into the present, due to Defendants' failure to pay Plaintiff, and the Class all minimum wages, overtime

wages, meal period premiums, and rest period premiums, the wage statements issued by Defendants do not indicate the correct amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Defendants have violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff and the Class.

108. Separate and independent from the foregoing, from August 11, 2023 and continuing into the present, some of the wage statements issued by Defendants to Plaintiff include categories of pay that require information about the hours and rate for which there is none. For instance, but not limited to this example, for the pay period of October 22, 2023 to November 4, 2023, Plaintiff received a wage statement that listed his MealPen Prem at $1.00 with no rate nor hours or amounts.

BLVD RESIDENTIAL INC.
4080 CAMPBELL AVENUE
MENLO PARK, CA 94025

Period Beginning: 10/22/2023
Period Ending: 11/04/2023
Pay Date: 11/10/2023

ANTONIO URRUTIA
[redacted]

Filing Status: Married filing jointly
Exemptions/Allowances:
Federal: Standard Withholding Table

Social Security Number: XXX-XX[redacted]

Earnings	rate	hours	this period	year to date
Regular	25.0000	65.93	1,648.25	16,413.75
Overtime	37.5000	3.53	132.38	2,276.59
Housing Allow			404.00*	3,636.00
Meal Per Prem	25.0000	1.00	25.00	655.30
MealPen Prem			1.00	1.00
OT Premium	7.5750	3.53	26.74	26.74
Sick Hours	25.0000	16.00	400.00	400.00
HOL				200.00
Gross Pay			$2,637.37	23,609.38

* Excluded from federal taxable wages

Your federal taxable wages this period are $2,204.48

Other Benefits and Information	this period	total to date
Totl Hrs Worked	69.46	
Sick Available		10.40
Vac Available		27.72

109. Plaintiff contends that Defendants failed to include the number of hours worked at these rates on Plaintiff, itemized wage statements in violation of Labor Code § 226(a)(9).

110. In addition, the wage statements issued to Plaintiff and the Class did not include the actual total hours worked by the employee due to the-off-the-clock work in violation of Labor Code § 226(a)(2). As previously explained, in express violation of Section 7(A)(3) of IWC Wage Order No. 5-2001 which requires employers to record "when the employee begins and ends **each**

work period." Instead, Defendants failed to report the time that it knew that Plaintiff and the Class were working while off-the-clock In other words, Defendants did not include the total hours worked by the employee during the pay period including hours that it knew they had worked regardless of whether or not compensation was provided for such time in violation of Labor Code § 226(a)(2).

111. In addition to violating Labor Code § 226(a), Defendants also knowingly and intentionally failed to pay Plaintiff and the Class minimum wages, overtime wages, meal period premiums, and rest periods premiums including at the proper rates.

112. In addition to violating Labor Code § 226(a), Defendants also knowingly and intentionally failed to include the number of hours worked and rates associated with several categories of pay in violation of Labor Code section 226(a)(9).

113. Moreover, Plaintiff and the Class also suffered legal "injury" for purposes of Labor Code section 226(e) insofar as they were unable to readily and easily determine from the wage statements themselves the information required to be set forth by Section 226(a), the information provided by Defendants were confusing and inaccurate. In addition, Plaintiff and the Class were unable to determine at all the total hours worked by the employee, the gross wages earned, the net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee for the reasons discussed above.

114. Moreover, Defendants undeniably knew when paying that the wage statements it issued did not include and/or accurately list, the gross wages earned, the net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee for the reasons discussed above. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid on commission" even though it believed that employees paid solely on commission or commission and salary "are exempt and therefore we do not record hours on a wage statement.").

115. Defendants also failed to both comply with and create a policy that complied with Labor Code § 226 prior to the filing of this lawsuit and having been previously sued for violating Labor Code section 226. Labor Code § 226(e)(3) provides that when determining whether or not an employer's violation of Labor Code § 226(a) was knowing and intentional, "the relevant factor [is] whether the employer, prior to an alleged violation, has adopted and is in compliance with a set of policies, procedures, and practices that fully comply with this section." Accordingly, Defendants' conduct was knowing and intentional within the meaning of Labor Code § 226(e).

116. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorneys' fees. *See* Lab. Code § 226(e). Plaintiff and the Class seek penalties under Labor Code § 226(e) in amounts to be determined at trial, and are entitled to recovery of such amounts, attorneys' fees, and costs.

X.
SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES PURSUANT TO LABOR CODE §§201-203
[Against all Defendants on behalf of Plaintiff, the General Late Payment Subclass, the Sick Pay Late Payment Subclass, and the Sick Pay Incentive Pay Late Payment Subclass]

117. Plaintiff on behalf of himself, the General Late Payment Subclass, the Sick Pay Late Payment Subclass, and the Sick Pay Incentive Pay Late Payment Subclass re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

118. Sections 201 and 202 of the California Labor Code requires Defendants to pay all compensation due and owing to former employees in the Class during the actionable period for this cause of action, at or around the time that their employment is terminated.

119. Section 203 of the California Labor Code provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

120. As described in detail above, Defendants failed to pay Plaintiff and the other Class Members whose employment concluded all wages owed, including but not limited to all minimum wages, overtime wages, meal period premiums, and rest period premiums and sick pay within the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Thus, as result of Defendants' faulty policies described above, Plaintiff and the General Late Payment Subclass, the Sick Pay Late Payment Subclass, and the Sick Pay Incentive Pay Late Payment Subclass members left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

121. Separate and independent of the foregoing, Defendants also failed to pay Plaintiff and the other Late Payment Class all of their final wages at the time of their termination, at the time of their last day if they gave more than three (3) days' advance notice, or within 72 hours of a resignation without notice as required by Labor Code §§ 201 and 202. Thus, as result of Defendants' faulty policies described above, Plaintiff and the Late Payment Subclass left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

122. At the time of Plaintiff, the other members of the Late Payment Class' separation from Defendants, the sums were certain and known to Defendants.

123. As a result, Defendants are liable to Plaintiff and the Late Payment Class who are no longer employed by Defendants for waiting time penalties amounting to thirty (30) days wages for Plaintiff and each Class Member pursuant to California Labor Code § 203. See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

XI.
<u>SEVENTH CAUSE OF ACTION</u>
UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200
[Against all Defendants on behalf of Plaintiff and the Class]

124. Plaintiff, on behalf of himself and the Class realleges and incorporates by reference all previous paragraphs.

125. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself, on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to Business & Professions Code § 17200, *et seq*. The conduct of Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and the Proposed Classes. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

126. Defendants have engaged in unlawful and unfair business practices that violate fundamental public policies of the state of California. As a result of its unlawful and unfair business practices, Defendants have forced employees to work under substandard and unlawful conditions in an effort to gain a competitive advantage over law-abiding employers who comply with California's Labor Code.

127. Defendants have violated statutes and public policies as alleged herein. Through the conduct alleged in this Complaint, Defendants have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Profession Code § 17200, et seq., depriving Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and privileges guaranteed to all employees under law.

128. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in violation of § 17200 et seq. of the Business & Professions Code.

129. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise of reasonable care, should have known that the conduct was unlawful. As such it is a violation of § 17200 et seq. of the Business & Professions Code.

130. As a proximate result of the above-mentioned acts of Defendants, Plaintiff, the Class, others similarly situated, other businesses, and the general public have been damaged in a sum as may be proven.

131. As part of their claims against Defendant, Plaintiffs seek not only the unpaid wages, but also the market value of the loss of the statutory protections and the cost to other employers of providing proper pay, breaks, and complying with the California Labor Code provisions identified herein. *See e.g. Safeway, Inc. v. Sup. Ct.*, 238 Cal.App.4th 1138, 1162 (2015).

132. Unless restrained, Defendants will continue to engage in the unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by Defendants, its agents, or employees, of any unlawful or deceptive practices prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and disgorgement of profits which may be necessary to restore Plaintiff and members of the Proposed Classes the money Defendants have unlawfully failed to pay.

XII.
<u>EIGHTH CAUSE OF ACTION</u>
PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ. FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246-248, 256, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, and IWC Wage Order No. 5-2001 or Other Applicable Wage Order
[Against all Defendants on behalf of Plaintiff and the aggrieved employees]

133. Plaintiff, on behalf of the State of California, realleges and incorporates by reference all previous paragraphs.

134. Plaintiff filed his PAGA Notice online with the Labor Workforce Development Agency ("LWDA") and sent a letter by certified mail to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq*. As required by PAGA, Plaintiff submitted the $75.00 filing fee to the LWDA. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received and/or will be received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the postmark date of the PAGA notice. Plaintiff is therefore, entitled to commence and proceed with a civil action pursuant to Labor Code § 2699.

135. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2698, *et seq.* because of Defendants' violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246-248, 256, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, and IWC Wage Order No. 5-2001 or other applicable Wage Order.

136. There is currently a split of authority regarding which PAGA penalties apply to violations of Labor Code § 226(a). *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 355 (2021) (holding that such violations give rise to a 2699.3 penalty) *cf.*; *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 675 (2018) (holding that such violations give rise to a Labor Code § 226.3 penalty). Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial violation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." As explained in detail above, Defendants failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements. Accordingly, to the extent it applies, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 or 2699 penalties for Defendant's violations of Labor Code § 226(a).

137. Labor Code § 210 provides that "in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections…204…shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld."

138. As a result of the faulty compensation policies and practices described in detail above, the State of California is entitled to recover penalties under Labor Code § 210 through PAGA.

139. Further, Labor Code § 558 imposes a penalty upon employers "who violates, or causes to be violated…any provision regulating hours and days of work in any order of the

Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid…" Based upon the above factual allegations related to overtime violations, Plaintiff and the aggrieved employees are entitled to recover civil penalties under Labor Code § 558 and not any underpaid wages under PAGA. *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019).

140. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid….[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. As set forth above, Defendants failed to compensate Plaintiff and all aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover civil penalties for violations of Labor Code § 1197.1.

141. Labor Code § 256 serves as the civil default penalty for a violation of Labor Code section 203 under PAGA and provides for "a civil penalty in an amount not exceeding 30 days' pay as waiting time under the terms of Section 203. *See Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 381 (2014); *see also Esparza v. KS Industries, L.P.* 13 Cal.App.5th 1228, 1242 (2017) (explaining that the Labor Code § 256 penalties only exist if the employer's failure to timely pay wages upon separation was willful is a "civil penalty"). To the extent permitted by law Plaintiff seeks Labor Code § 2699.3 penalties at either the default amount or the amount proscribed by Labor Code § 256 for Defendant's violations of Labor Code §§ 201 and 202.

142. As described in detail above, Defendants willfully failed to pay Plaintiff and other aggrieved employees whose employment concluded all wages owed, including but not limited to overtime wages within the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Thus, as result of Defendants' faulty policies described above, Plaintiff and all aggrieved employees left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, 203, and 256.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. An Order that this action may proceed and be maintained as a Class Action on behalf of the Classes;

2. For compensatory damages in the amount of unpaid minimum wages not paid to Plaintiff and each Class Member from August 11, 2023 and continuing into the present as may be proven;

3. For compensatory damages in the amount of unpaid overtime wages (including doubletime wages) not paid to Plaintiff, each Class Member from August 11, 2023 and continuing into the present as may be proven;

4. For compensatory damages in the amount of Plaintiff and each Class Members unpaid and/or underpaid meal period premiums from August 11, 2023 and continuing into the present as may be proven;

5. For compensatory damages in the amount of Plaintiff and each Class Members unpaid and/or underpaid rest period premiums from August 11, 2023 and continuing into the present as may be proven;

6. For penalties pursuant to Labor Code § 226(e) for violations of Labor Code § 226(a) in the amount of fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000) for the inaccurate itemized

wage statements issued to Plaintiff and the Class from August 11, 2023 and continuing into the present as may be proven;

7. An award to Plaintiff and the Late Payment Class of waiting time penalties in the amount of up to 30 days' wages;

8. For restitution for unfair competition pursuant to Business & Professions Code § 17200 to Plaintiff and the Unfair Competition Class for actions, including disgorgement of profits, in an amount as may be proven;

9. An order enjoining Defendant and its agents, servants, and employees, and all persons acting under, in concert with, or for it from providing Plaintiff and the Proposed Class Members proper compensation for all hours worked, overtime hours worked, meal period premiums, rest period premiums, from failing to provide timely first meal periods within the first five (5) hours of an employee's shift, from failing to provide proper rest periods, from failing to pay meal/rest period premiums at the employee's regular rate instead of at their hourly base rate, from paying reporting time pay at the employee's base rate instead of at their regular rate, and from timely failing to pay all wages.

10. For penalties under Labor Code § 2698, *et seq*. for Plaintiff and all aggrieved employees because of Defendants' violation of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246-248, 256, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, and IWC Wage Order No. 5-2001 and/or other applicable wage order;

11. A declaratory judgment that Defendants' violated the Labor Code as set forth herein;

12. An award of pre-judgment and post judgment interest;

13. An award providing for payment of costs of suit;

14. An award of attorneys' fees, including, but not limited to, pursuant to Labor Code §§ 226, 218.5, 2698 and Code of Civil Procedure § 1021.5; and

15. Such other and further relief as this Court may deem proper and just.

DATED: March 12, 2024

WINSTON LAW GROUP, P.C.

By: David Winston

DAVID S. WINSTON
Attorneys for Plaintiff, the Proposed Classes, and the aggrieved employees